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Closing the Loopholes on Fraud:

OIFP's Recommendations for Legislative and Regulatory Reform

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OIFP's Recommendations For Legislative and Regulatory Reform

Pursuant to N.J.S.A. 17:33A-24, the Office of the Insurance Fraud Prosecutor (OIFP) is required to evaluate and formulate proposals for legislative, administrative and judicial initiatives to strengthen insurance fraud enforcement. OIFP staff are vigilant throughout the year in identifying possible vulnerabilities and weaknesses in New Jersey's insurance system, and in finding ways to address them. Many of the recommendations made by OIFP in prior Annual Reports have become law by the adoption of regulations, or the enactment of legislation, responsive to these recommendations. OIFP's recommendations for 2004 are as follows:

Regulation of Public Adjusters

Statement of the Problem:
Insureds who are fire victims are often overwhelmed by solicitation from multiple public adjusters who arrive at their homes within hours of this catastrophic event, sometimes before the fire is even fully extinguished. Because most of these insureds have never before been the victim of a fire, they are often unaware of their rights under their homeowners or renters insurance policy. Consequently, insureds whose homes have burned have often fallen prey to overzealous public insurance adjusters who, for a fee based upon the percentage of recovery, represent insureds with respect to their claims under their insurance policies. Many public adjusters charge exorbitant rates of up to 40 percent of the insured's recovery. Because of the aggressive tactics employed by many public adjusters, which includes contacting victims when they are most vulnerable in the immediate hours following their loss, many victims recover far less under their insurance policies than they should because they have entered into contracts with public adjusters be-

fore they have had an opportunity to confer with others and to consider all of their options. Although public adjusters are currently prohibited under N.J.S.A. 17:22B-13 from contacting an insured between the hours of 6:00 p.m. and 8:00 a.m. within the first 24 hours after the occurrence of a loss, experience has demonstrated that this limitation should be toughened.

Proposed Solution:

In order to protect vulnerable insureds from the aggressive tactics of some overzealous public adjusters, it is suggested that N.J.S.A.17:22B-13 be amended to provide that public adjusters be precluded from contacting insureds within 48 hours after they sustain a loss compensable under an insurance policy.

Regulation of Towing Companies

Statement of the Problem:

Some unscrupulous towing companies artificially inflate fees for the towing and storing of automobiles which have been involved in accidents or which have been towed and stored after retrieval as abandoned or stolen property. In the absence of a local municipal ordinance, or a contractual fee schedule entered into between a towing operator and a municipality, insurance companies, municipalities and car owners may be charged excessive sums of money for the services provided by some towing operators. The problem is exacerbated when a towing company, which maintains a storage yard, fails to take adequate steps to ascertain and/or notify the owner of the vehicle of the storage charges which are being incurred, or, in some cases, that it is even storing the vehicle. Such a scenario may occur in a case where the towing operator has been requested by a municipality to remove a vehicle which appears to be abandoned, but, is, in fact, the subject of a theft. The "Fair Automobile Insurance Reform Act of 1990" had previously authorized the Commissioner of the Department of Banking and Insurance to establish a towing and storage fee schedule to address the problem of fraud and related abuses by towing operators, particularly as it related to those costs incurred in the context of a covered loss. That fee schedule, however, was not supported by sufficient penalties to prevent the charging of unnecessary or exorbitant fees by towing operators, and permitted towing operators to bill for other services not encompassed within the fee schedule.

The Act was repealed in 1997 in conjunction with legislation that provided municipalities with greater authority to regulate towing and storage bills. Under N.J.S.A. 40:48-2.54, municipalities which require the towing and storage of motor vehicles without the consent of their owners are required to adopt a "model schedule" of towing and related storage fees based upon the "usual, customary and reasonable" prevailing rates. Under N.J.S.A. 40:48-2.49, other municipalities may adopt such a schedule. Nonetheless, insurers and owners are sometimes billed exorbitant "administrative" and other fees, not addressed within such schedules. Such fees are even imposed in connection with obtaining access to inspect a vehicle which is being stored.

Proposed Solution:

In order to prevent unscrupulous towing companies from charging excessive and exorbitant fees in connection with a covered loss, it is recommended that legislation be enacted similar to the repealed Act, authorizing the Commissioner of the Department of Banking and Insurance or other appropriate agency head

to promulgate a schedule of appropriate towing and storage fees applicable to automobiles which have been damaged in accidents, or which have been recovered after being stolen. Such legislation should provide greater detail with respect to the types of charges which towing operators may charge, not only to municipalities, but also to insurers and owners, as well as stronger penalties for those towing operators who violate the fee schedule. It should also require the towing or storage yard owner to promptly take reasonable measures to identify and notify the owner and insurer of the vehicle of its location and any towing and storage fees that have accrued, or are accruing. The legislation should not, however, repeal or otherwise limit the current law which provides municipalities with authority to regulate towing and storage fees as they relate to costs incurred by those municipalities which have chosen to enact ordinances providing for such regulation.

Unauthorized Practice of Chiropractic or Psychotherapy

Statement of the Problem:

It is a crime in New Jersey for a person, who is not properly licensed, to practice or purport to practice medicine, podiatry, surgery, dentistry, or law. N.J.S.A. 2C:21-20; N.J.S.A. 2C:21-30; N.J.S.A. 2C:21-22; N.J.S.A. 2C:21-31. These provisions apply equally to persons who may have once been licensed to provide such services but whose license has been suspended, revoked or surrendered, as well as to persons who do not possess the requisite expertise or training while holding themselves out as licensed professionals. Investigative experience has shown that persons who provide such services without being properly licensed also frequently commit insurance fraud by submitting bills in connection with such services, particularly those practicing or purporting to practice in the medical or allied medical professions. There is, however, no corresponding criminal provision in the law addressing the unauthorized practice of chiropractic or psychotherapy, both of which practices also frequently give rise to the fraudulent billing of insurance companies.

Proposed Solution:

In order to achieve consistency and deterrence, it is recommended that legislation be enacted to criminalize the unlawful practice of chiropractic and psychotherapy in the same manner that statutes have been enacted which make it a crime of the third degree to engage in the unlawful practice of certain other professions, such as medicine, dentistry and law.

Unlawful Transaction of the Business of Insurance by Unlicensed Persons

Statement of the Problem:

Persons who are not licensed as either insurance agents or insurance brokers sometimes hold themselves out as licensed or otherwise authorized insurance agents or brokers in order to engage in the business of selling insurance. In some cases, the person has never been licensed nor received any training qualifying that person to provide guidance in obtaining appropriate insurance coverage, while, in other cases, the person has once held a license, but has lost it involuntarily through suspension or revocation. Such persons create a substantial risk of harm to those with whom they deal because they are unqualified to provide appropriate guidance and advice, because they may be unable to “place” the insurance they pur-

port to be selling, or because they may simply steal premium payments from prospective insureds without making any attempt to obtain the anticipated insurance coverage. In some cases, those holding themselves out as agents or brokers even resort to issuing counterfeit insurance cards and insurance policies to perfect their scams. While such conduct is currently banned pursuant to the provisions of N.J.S.A. 17:17-12, which defines such conduct as constituting a "misdemeanor," an outdated term for conduct which is now the equivalent of a fourth degree crime under New Jersey's criminal code, it is not part of New Jersey's criminal code nor consistent with the grading of similar crimes pertaining to various types of activity by unlicensed persons. Such crimes are currently crimes of the third degree under the penal code. Further, it is not sufficiently clear that such conduct is proscribed pursuant to the provisions of the Fraud Act, which allows for the imposition of civil fines for conduct which violates that Act.

Proposed Solution:
In order to achieve consistency and deterrence, it is suggested that legislation be enacted to make it a crime of the third degree under N.J.S.A. 2C:21-35 for any person to engage in the unlawful transaction of the business of insurance when not properly licensed to do so by the New Jersey Department of Banking and Insurance. As a corollary, the current provision banning such conduct under N.J.S.A. 17:17-12 should be repealed. It is further suggested that the Insurance Fraud Prevention Act be amended so as to include the defined conduct as a violation thereof, thereby also subjecting such a person to the imposition of substantial civil fines.

Transfers of Title to Stolen Vehicles

Statement of the Problem:
Whenever title to a vehicle is obtained through the Motor Vehicle Commission (MVC), there is no mechanism to determine whether the vehicle which is the subject of the title request is a vehicle which has been reported as stolen and entered into law enforcement's NCIC database. Without such a mechanism, it is sometimes possible for a person who has stolen a vehicle to obtain a facially valid title to that vehicle, despite the fact that the vehicle has been reported stolen to law enforcement authorities.

Proposed Solution:
In order to prevent the unwitting transfer of title to a stolen vehicle, it is recommended that at the time of issuance of a title to any vehicle, the Motor Vehicle Commission be provided with a means to determine if the vehicle has been reported as stolen to any law enforcement authorities, whether by providing limited access to the NCIC database, by extracting data from the NCIC database in such a manner as to make it readily accessible to MVC officials, or by such other means as may be practicable.

Revision of Statute Making It a Crime to Use "Runners"

Statement of the Problem:
Investigative experience has demonstrated that many fraudulent insurance claims, particularly those relating to automobiles, are driven by the conduct of "runners." "Runners" are persons who procure patients or clients for licensed medical and legal service providers in return for money so that those providers can seek benefits under an insurance contract. In New Jersey, the Legislature enacted the "Criminal Use of Runners" statute to proscribe such conduct. Experience has shown, however, that the use of the statute to combat insurance fraud would be enhanced if the underlying policy reasons supporting the statute were published as legislative findings and declarations.

Proposed Solution:
For the sake of expediency, it is recommended that the Legislature enact remedial legislation setting forth explicit legislative findings and declarations clearly enumerating the policy reasons that support the "Criminal Use of Runners" statute. Such legislative findings and declarations will underscore the rationale behind the enactment of the statute and its application to conduct defined therein, even in the absence of underlying insurance fraud.

Reverse Rate Evasion

Statement of the Problem:
In order to obtain lower insurance premiums, persons residing in New Jersey, in a practice commonly known as "reverse rate evasion," often obtain their automobile insurance in an adjacent state, despite the fact that their vehicles are principally garaged and used in New Jersey. While this form of "application fraud" or "premium fraud" is actually committed in the adjacent state when the insurance is applied for, and while the insurance companies which are victimized by this type of fraud may not transact business in New Jersey, New Jersey residents are put at risk because the out-of-state insurance policies may provide less coverage than that mandated in New Jersey, and because the out-of-state insurance policies may be voided when the insurance carriers discover the underlying application fraud. It is also inherently unfair and violative of good public policy to allow residents of New Jersey to fraudulently obtain out-of-state insurance coverage at lower rates than their law-abiding neighbors in New Jersey.

Proposed Solution:
In order to achieve equity and protect the law abiding citizens of New Jersey, legislation should be enacted to amend the Insurance Fraud Prevention Act to make the practice of "reverse rate evasion" a violation of the Act, thereby subjecting violators to the imposition of substantial civil fines.

Health Care Claim Form Revisions

Statement of the Problem:
Medical providers and those in the allied medical professions are often able to avoid civil or criminal responsibility for submitting fraudulent health care claims because of the vague and imprecise manner in which the claim forms are composed. Because claim forms are often prepared by employees of the provider, or by an independent business contracted by the provider, it is often difficult, if not impossible, to hold the provider responsible when the claim forms contain false, misleading or incomplete information. Further, the forms are frequently inadequate to elicit information as to the overall context of treatment within which the billed service was rendered, whether the billed service was properly coded and whether the billed service was rendered by, or under the supervision of, a duly licensed professional.

Proposed Solution:
In order to ensure greater accountability, health insurance claim forms, whether paper or electronic, should be designed so as to require the inclusion of information specifically identifying the type of procedures, medical services and medical supplies provided, as well as the amounts actually paid by the patient. Forms should also elicit information identifying any person in the provider's office providing the services billed, including the professional license number and taxpayer identification number (TIN) associated with the licensed medical provider and with any persons or entities identified as having provided any of the services set forth in the claim forms. The forms should also incorporate a certification specifically affixing personal legal responsibility for the accuracy of the claim with the professional licensee in whose name, or under whose supervision, the services were provided. The certification should specify that the responsible provider has reviewed the claim form and that it is accurate, complete and truthful with respect to all information contained therein.

Stricter Regulation of the Diagnostic Imaging Industry

Statement of the Problem:
Because of its relatively weak regulatory framework with respect to the regulation of diagnostic imaging facilities, New Jersey is a particularly inviting target for unscrupulous operators. Currently, any private citizen, regardless of experience in the medical or allied medical professions, may own a diagnostic imaging facility subject only to the condition that the facility is affiliated with a licensed medical provider. Although prospective owners are required to reveal any prior criminal convictions when making application to the Department of Health, the Department lacks the authority to conduct the necessary criminal background checks to verify the veracity of the information provided by the applicant. Further, a prior criminal conviction does not necessarily, in and of itself, disqualify a

person from owning a diagnostic imaging facility. Because diagnostic imaging is frequently prescribed for those claiming to have been injured in an automobile accident, diagnostic imaging facilities are often associated with treatment mills, and are often looked to as a source of reports to corroborate questionable or fabricated claims of injury.

Proposed Solution:

In order to better assess the qualifications of persons applying for ownership of diagnostic imaging facilities, it is recommended that legislation be enacted requiring criminal background checks of all such applicants, providing the resources to conduct such background checks, and prohibiting the granting of a license to any person who has been convicted of a crime which appears incompatible with the traits of trustworthiness, honesty and obedience to law and order.